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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re L.F., Jr., A Person Coming Under
the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

B250734

(Los Angeles County
Super. Ct. No. CK89151)

APPEAL from an order of the Superior Court of Los Angeles County, D.
Zeke Zeidler, Judge. Affirmed.

Grace Clark, under appointment by the Court of Appeal, for Defendant and
Appellant.

John F. Krattli, Office of the County Counsel, James M. Owens, Assistant
County Counsel and Erica Edelman-Benadon, Deputy County Counsel, for
Plaintiff and Respondent.

Appellant T.B. (Mother) appeals the order terminating her parental rights over her two-year old son, L.F., Jr. (L) under Welfare and Institutions Code section 366.26.¹ Mother contends the court erred when it failed to apply the beneficial parental relationship exception. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2011, when L was two months old, Mother was involved in a violent altercation with her own mother, Trudy B., with whom she and L were living.² Mother hit Trudy and Trudy stabbed Mother in self-defense. Mother was subsequently placed on a 72-hour psychiatric hold.³ Mother and Trudy reported that the altercation began as an argument about Mother's failure to wash the baby's clothing, sterilize his bottles, or properly dispose of his dirty diapers. A maternal aunt confirmed that Mother, who had been diagnosed as autistic, was not properly caring for the baby and appeared to be depressed. L was detained.

On August 1, 2011, the Department of Children and Family Services (DCFS) filed a petition alleging that L was a child described by section 300, subdivisions (a) (serious physical harm) and (b) (failure to protect). On August 8, L was placed with Michelle W., a non-related extended family member. Mother visited L regularly, two to three times a week, in Michelle's home. The court ordered a mental health evaluation for Mother. Mother initially denied the need for any mental health intervention. She was eventually evaluated by a

¹ Undesignated statutory references are to the Welfare and Institutions Code.

² L's father, L.F., Sr., was living in a separate household. He died while the underlying proceedings were pending.

³ The caseworker learned that Mother had a history of cutting and burning herself and had been placed on psychiatric holds twice in the past, once after attempting suicide and once after chasing L's father with a hammer.

psychologist, who concluded she suffered from impaired cognition, poor insight and judgment, and other significant psychological problems, and was in “no position to take physical custody of [L].”

At the October 2011 jurisdictional hearing, the court found the following allegations pertinent to Mother true under section 300, subdivision (b): (1) that Mother and Trudy engaged in a physical altercation in the presence of L, during which Mother struck Trudy and Trudy injured Mother, and that such altercations endangered L’s physical health and safety and placed the child at risk of harm; and (2) that Mother had a history of mental and emotional issues which rendered her unable to provide regular care for L and endangered the child’s physical health, safety and well being, and placed him at risk of harm. The court ordered reunification services.

Mother made initial progress. The January 2012 interim review report stated that Mother had completed an anger management program and a parenting class. She was scheduled to begin counseling at the end of January. She had been visiting L three times a week in Michelle’s home. Michelle reported, however, that Mother seemed nervous handling the baby and needed encouragement to hold, feed or play with him.

In the April 2012 status review report, the caseworker stated that Mother was enrolled in individual counseling and attending therapy weekly. The therapist reported that Mother attended all her scheduled sessions and was cooperative, but expressed concern that she might never be capable of caring for a child without supervision. Although Mother continued to visit L regularly, Michelle reported Mother still needed to be encouraged to hold, feed and play with the boy, and that she became frustrated when L cried. Michelle did not believe Mother was capable of caring for L on her own. L, who was eleven months old at the time, was developing well in the care of Michelle and appeared happy. He recognized

Mother, but turned to Michelle for comfort. DCFS recommended and the court ordered additional reunification services. The court's order specifically directed DCFS to assist Mother in enrolling in "Mommy and Me" classes or an interactive parenting program.

In the summer of 2012, Mother and L enrolled in a "Mommy and Me" class, a hands-on parenting class, and a dyadic parenting program.⁴ The instructor of the parenting class reported that Mother was an active participant during the four-week program. The director of the parenting program reported that although L was comfortable with Mother, she had an insecure bond with L and was not showing the confidence necessary to provide for his needs. The director proposed that Mother continue in the program an additional 12 months. Michelle reported that during visits, Mother never completely took over the care of the baby, allowing Michelle to change his diaper and stay with him when he went outside. The caseworker observed a visit and found Mother's interaction with L to be "minimal": she did not play with L, change him, or redirect him when he misbehaved. During the visit, L hit his head and turned to Michelle for comfort. The maternal aunt with whom Mother was living reported that Mother had difficulty managing her own affairs, and that when L visited in their home she (the maternal aunt) was constantly prompting Mother to check his diaper, feed him and pay attention to him. After learning that the aunt was not receptive to having L reside in her home, Mother stated: "I am left without a choice. I want Michelle to adopt [L]." Subsequently, she stated she wanted L back in her care, but needed financial assistance. DCFS recommended termination of reunification services at the upcoming 12-month review hearing.

⁴ Although the term is not defined by the parties, the "dyadic" program apparently involved a parenting instructor or "parent aide" providing one-on-one, in-home training.

At the October 2012, 12-month review hearing, the court ordered six additional month of services and specifically ordered continuance of the dyadic parenting program. Within a few days of the hearing, the caseworker learned that Mother had stopped attending counseling and the dyadic parenting program, although the director of the program had directly contacted Mother and encouraged her to continue. Mother told the caseworker that she just wanted Michelle to adopt L. The January 2013 status review report stated that Mother was no longer regularly visiting L, having failed to visit him at all in November. Mother and L had had one visit in December, at Christmas, at which time, L did not appear to recognize Mother. Michelle expressed a desire to adopt L and DCFS began an adoption study. DCFS recommended terminating reunification services, noting that Mother had received 18 months of services and was still not in a position to care for L. Mother did not appear at the 18-month review hearing on January 28, or at the continued date of February 8. She had not been in contact with her court-appointed lawyer and had given him no direction. On February 8, the court terminated services and set a section 366.26 hearing.

At the July 2013 contested section 366.26 hearing, Mother claimed to be visiting L regularly. She further testified that when she visited, they played together or he played on his own, and he did not appear to want to be held or need assistance being fed. Michelle testified that Mother had begun regular visitation a month earlier, but had visited only a handful of times in February, March, April and May. The court found that the evidence did not support that Mother had regular and consistent visitation and that even if she had established appropriate

visitation, there was nothing to indicate she filled a parental role that outweighed the benefits of adoption.⁵ The court terminated parental rights. Mother appealed.

DISCUSSION

Section 366.26, subdivision (c)(1) requires the juvenile court to terminate parental rights and order the dependent child placed for adoption if it finds by clear and convincing evidence that the child is likely to be adopted, unless it finds “a compelling reason for determining that termination would be detrimental to the child” due to the existence of specified exceptional circumstances. (See § 366.26, subd. (c)(1)(B).) The provision raised by Mother here, subdivision (c)(1)(B)(i), provides an exception to termination where “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.”

There is no dispute that L was likely to be adopted by Michelle, with whom he had lived since he was a few months old. Once the likelihood of adoptability is ascertained, the burden is on the parent to demonstrate that termination of parental rights to free the child for adoption would be detrimental to the child. (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039; *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.) “Because adoption is more secure and permanent than a legal guardianship or long-term foster care, adoption is the Legislature’s first choice for a permanent plan for a dependent minor child who has not been returned to the custody of his or her parents and who is found by the dependency court to be adoptable.” (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) “[I]t is only in

⁵ Mother erroneously states in her brief that the court found she had established regular and consistent visitation. The court stated at the hearing: “It does *not* appear that [Mother] has had regular and consistent visitation and contact.” (Italics added.)

exceptional circumstances that a court will choose a permanent plan other than adoption.” (*Ibid.*) “[T]he court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) We review the trial court’s section 366.26 finding to determine whether substantial evidence supports it, construing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court’s ruling. (See *In re S.B.* (2008) 164 Cal.App.4th 289, 297-298; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

The evidence concerning the consistency of Mother’s visitation was disputed. The court found Michelle’s testimony and the information in the caseworker’s report to be more credible than Mother’s testimony, and concluded that the first prong of subdivision (c)(1)(B)(i) of section 366.26 had not been met. We cannot substitute our judgment for that of the trial court on issues of fact and credibility. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200; *People v. Maxwell* (1979) 94 Cal.App.3d 562, 577.) The court’s finding on visitation, standing alone, supports the termination order. Moreover, the evidence that Mother had not developed a significant parental bond with L was overwhelming. Mother did not dispute that she was not properly caring for the child prior to DCFS intervention. Thereafter, every witness who observed them together reported that Mother needed to be encouraged to hold, feed, and change the child, and that any bond between them was weak and insecure. Evidence in the record also established that L turned to Michelle for comfort, even when Mother was present, and that by the time of the section 366.26 hearing, he no longer seemed to

recognize Mother. The court reasonably concluded that no substantial, positive attachment existed between Mother and L and that termination of parental rights would not result in detriment to the child.⁶

⁶ Mother contends the court was required to take into account the challenges she faced forming a bond as a parent suffering from autism and developmental delays. She cites no authority for the proposition that parents suffering mental and developmental issues have a lesser burden when raising an objection to termination of parental rights and adoption. In any event, the record clearly reflects that in consideration of Mother's difficulties, the court provided Mother with six additional months of reunification services beyond the 12 months usually afforded to the parents of an infant and ensured Mother was enrolled in a program that provided one-on-one parental training. Mother ceased participating in all services after the 12-month review hearing, including the dyadic parenting program, and essentially stopped visiting L. The lack of a parental bond at the time of the section 366.26 hearing was the consequence of Mother's own inaction.

DISPOSITION

The order terminating parental rights is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

EDMON, J.*

*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.